IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Karan Singh & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.181/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 15-3-2001 in Sessions Case No.7/1996 passed by Sh. Vinay Kumar Chawla, RHJS, Additional Sessions Judge Behror District Alwar.

Date of Judgment: August 09, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Suresh Dhenwal on behalf of
Mr. Praveen Balwada, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Karan Singh and Raju @ Rajendra Singh, the appellants herein, were put to trial before learned Additional Sessions Judge Behror District Alwar, who vide judgment dated March 15, 2001 convicted and sentenced the appellants under section 302/34 IPC to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer imprisonment for three months.

2. It is the prosecution case that on November 3, 1995 at 10.30 AM informant Gulab (Pw.1) handed over a written report (Ex.P-1) at Police Station Bansoor to the effect that in the preceding night around 11-11.30 PM Raju and Karan (appellants) came to her house and took her son Basanta with them. Thereafter on the next morning around 6 AM Basanta was

brought by two watchmen to her house in an injured condition. On being enquired Basanta informed her that it were Raju and Karan who caused injuries with knives on his person. Basanta was immediately removed to the hospital where he succumbed to his injuries. On that report case under sections 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Behror District Alwar. Charge under section 302/34 IPC was framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in support of defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Death of Basanta was unquestionably homicidal in nature. As per post mortem report (Ex.P-13) following ante mortem injuries were found on the dead body:-

1. Lacerated wound 5 x 1 x bone deep Rt. parietal region of head.
2. Lacerated wound 13 x 1.5 x 1cm left parietal region of head to mandible.
3. Lacerated wound 4 x 1.5 x bone deep middle part of the occipital region of head.
4. Lacerated wound 6 x 1 x 1cm Rt. foot on thumb to the inner part of foot at thumb line.
5. Abrasion 5 x 4cm lower part of Rt. thigh posteriorly.

In the opinion of Autopsy Surgeon (Pw.12) the cause of death was fracture of skull bone (left parietal bone) hemorrhage, injury to vital organ (Brain) and shock.

5. It appears that in the written report (Ex.P-1) the prosecution laid foundation of its case on the alleged dying declaration of Basanta. Relevant portion of report reads as under:-

> सुबह करीब 6 बजे गश्ती दो गोरखा मेरे लडके बसन्ता को हमारे घर लेकर आये जिसके गर्दन पर पैरों पर सिर में काफी चोटें थी बसन्ता से हमने पूछा तो उसने बताया कि मुझे राजू तथा कर्ण दोनों ने चाकुओं से मारा है।

However the foundation was not utilized for erecting structure. The prosecution case was completely changed at the trial. In her deposition Gulab (Pw.1) mother of deceased, stated that a watchman came to her and intimated that her son was done to death. She then rushed to the spot and saw Raju and Karan running. She stated thus:-

> "इस घटना को एक चौकीदार ने देखा है जो पहरा देता है। वो ही मुझे बुलाकर ले गया था कि बसन्ता की मां तेरे लडके को खत्म कर दिया है ... मैं मौके पर गयी थी। इन दोनों को मैंने मारते हुए देखा है।"

Gulab admitted in her cross examination that deceased was habitually drunkard. She appears to have made improvements in her deposition at the trial since many facts stated by her at the trial were not mentioned in her police statement Ex.D-1.

6. Gheesa Ram (Pw.2), father of deceased, deposed that Karan Singh and Raju took Basanta with them around 11.30 PM. Thereafter in the

night itself `Gashti Chowkidar' informed that his son was lying injured. He along with his wife had gone to the spot. Basanta told them that Karan Singh and Raju cut him.

7. Karan Singh Chowkidar (Pw.3) did not support the prosecution case and was declared hostile. Krishna Kumar (Pw.8) deposed that he owned a hotel near wine shop. Karan Singh and Basanta came to his hotel to eat Omlet. At that time Basanta was under intoxication.

8. Dr.R.D.Meena (Pw.11) who performed autopsy on the dead body in his cross examination deposed that injuries sustained by the deceased could not be caused with knife.

9. Factual situation of the case may be summarized thus:-

(i) As per the FIR the prosecution case was that two Gorkha watchmen took injured Basanta to his house where he disclosed before his parents viz.Gulab (Pw.1) and Gheesa Ram (Pw.2) that appellants inflicted knife injuries on his person.

(ii) At the trial Gulab however stated that Basanta was not brought to her house but she had gone to the spot where she saw appellants running.

(iii) Gheesa Ram deposed that when he went to the spot Basanta told him that appellants had cut him.

(iv) Karan Singh watchmen (Pw.3) did not support the prosecution case.

(v) Injuries with knife were not found on the person of Basanta.

(vi) The only circumstance found established against the appellants was that they took Basanta with them to have dinner together.

(vii) Basanta was habitual drunkard. According to Hotel owner Krishna Kumar (Pw.8) Basanta and Karan Singh came to his hotel and ate Omlette. At that time Basanta was under intoxication.

10. On a close and critical examination of evidence on record we find that there are many inconsistencies and discrepancies in the prosecution story. The prosecution could not satisfactorily and conclusively prove the guilt of the appellants. Thus considered on the whole, we are of the opinion that the judgment of the trial court is based on conjectural findings and cannot be sustained. The discrepancies noticed by us escaped notice of the learned trial court. It is no doubt established that the appellants went to the house of Basanta and took him with them. Gheesa Ram (Pw.2) father of deceased deposed that Basanta did not take the food prepared in the house and accompanied appellants. Gheesa Ram stated thus:-

"हमने रोटी डाली तो बसन्ता ने थाली उठाकर फेंक दी और ये दोनों अभियुक्तगण बसन्ता को हाथ पकडकर ले गये और कहा कि तेरे को होटल पर भोजन करायेंगें।"

It appears from the statement of Krishna Kumar (Pw.8) Hotel owner that appellant Karan Singh kept promise and took Basanta to the hotel where he ate Omlette. Krishna Kumar deposed as under:-

"मैं जब होटल बन्द कर रहा था तो कर्णसिंह व बसन्ता आये थे। इन्होंने आमलेट मांगी थी... मैने आमलेट दे दिया- फिर आमलेट खाकर चले गये... बसन्ता नशे में था, दूसरा भी नशे में था।"

In view of evidence of Gheesa Ram and Krishna Kumar it is difficult

to hold that the appellants took Basanta from his house with the intention to kill him.

11. For these reasons, we allow the appeal and set aside the impugned judgment dated March 15, 2001 of the learned Additional Sessions Judge Behror District Alwar and acquit the appellants Karan Singh and Raju @ Rajendra Singh of the charge under section 302/34 IPC. Appellants Karan Singh and Raju @ Rajendra Singh, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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